SUPREME COURT, U. S.
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BRIEF FOR RESPONDENTS IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1353

WILLIAM A. BURLESON,
Petitioner,

v.

ROBERT L. FRIEDLI, AUGUST WOLFF, and JOSEPH J. PASTORE, Trading as Friedli, Wolff & Pastore,
Respondents.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

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WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D. C. 20001

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BRIEF FOR RESPONDENTS IN OPPOSITION

QUESTIONS PRESENTED

1. Whether this Court should exercise its jurisdiction to review by writ of certiorari a local rule of the Superior Court of the District of Columbia, of purely local application and significance, relating to the charges of private shorthand reporters for the taking, preparation and furnishing of copies of transcripts of depositions to attorneys.

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2. Whether this Court should exercise its jurisdiction to review by writ of certiorari a settlement of a lawsuit, for the collection of a $474.40 debt, which settlement occurred during the course of a jury trial, was approved by the parties, counsel and the Trial Court, resulting in the jury being dismissed with Petitioner's approval, and which settlement has been summarily affirmed by the District of Columbia Court of Appeals, (No. 3, Appendix).

COUNTER-STATEMENT OF THE CASE

This was originally a civil action for the collection of a $474.40 debt filed by the Respondents, a reporting company, against the Petitioner, an attorney-at-law, who practices in the District of Columbia. This action was initially filed in the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia on March 14, 1974, and thereafter certified to the Civil Division of the Superior Court of the District of Columbia. A jury trial was requested by Petitioner and on November 4, 1974, trial commenced. After four days of trial, a compromise and settlement was reached between the parties on all issues involved herein. After conferring with the parties, the Trial Judge dictated a Settlement Agreement into the transcript (No. 1, Appendix) in the presence of the parties who were given the opportunity to set forth their positions with respect thereto. Also, all parties were given the opportunity to make any changes, amendments, additions or qualifications to the Settlement Agreement. The terms of the Settlement Agreement were re-read by the court reporter and neither party made any changes with respect thereto. The Court as well as the Petitioner and counsel for Respondents personally initialed the original notes of the court reporter of the Settlement Agreement as dictated by the Court. The initialing by all parties including the Trial Judge, indicated full acceptance and affirmation of the

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terms and conditions of the Settlement Agreement by the parties and their willingness to be bound by the terms thereof. Thereafter, the Trial Court dismissed the jury with the approval of the Petitioner. Subsequently, the exact terms of the Settlement Agreement were transcribed by the court reporter. Petitioner then appealed to the District of Columbia Court of Appeals and filed his brief. Thereafter, the Respondents filed a Motion for Summary Affirmance requesting that the appeal be dismissed and that the Settlement Agreement be summarily affirmed. The District of Columbia Court of Appeals, on November 21, 1975, after having reviewed the record on appeal and Petitioner's brief filed therein, ruled that the Order on appeal be affirmed, (No. 3, Appendix).

REASONS WHY THE WRIT SHOULD BE DENIED

First, the record does not disclose any grounds for review conceivably falling within the standards and considerations governing review on writ of certiorari prescribed by Rule 19 of the Rules of this Court. The instant case involves nothing more than a small claims debt and a local rule of the Superior Court of the District of Columbia, Rule 30(f)(2), of purely local application and significance, relating to charges of shorthand reporters for copies of depositions furnished attorneys for litigants.

The Court has made it clear on many occasions that where, as here, it is confronted with a petition for a writ of certiorari involving nothing more than a matter of purely local significance, it will not, absent a clear showing of egregious error, exercise its jurisdiction. *Del Vecchio* v. *Bowers*, 296 U.S. 280, 285 (1935); *District of Columbia* v. *Pace*, 320 U.S. 698, 702 (1944); *Busby* v. *Electric Utilities Union*, 323 U.S. 72, 74-75 (1944); *Fisher* v. *United States*, 328 U.S. 463, 476-477 (1946);

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Griffin v. *United States*, 336 U.S. 704, 717-718 (1949), rehearing denied, 337 U.S. 921 (1949). There has been no showing of egregious error here.

Second, the record plainly indicates that this case has been previously settled and satisfied.

It is to be noted that in the Petitioner's Notice of Appeal, (No. 2, Appendix) he never mentioned that he was appealing from the Settlement Agreement that was dictated by the Trial Court and the court reporter's notes thereof, as initialed by the Petitioner. The Notice of Appeal states:

> "* * * from the judgment, order, decision, findings of fact and conclusions of law that the plaintiff's respective charges which brought about the payment of money into the Court, and made by the private shorthand reporters, plaintiffs herein, are fair and reasonable amounts, and entered into the Court Record November 7, 1974."

The Petitioner is trying to give the impression that he is appealing from something other than the Settlement Agreement which was voluntarily entered into at his request and which resulted in the jury being dismissed with his approval. It appears that what Respondent is really appealing from is paragraph two of the Settlement Agreement, wherein the Trial Court expresses its view relative to the respective charges made by the Respondents for the preparation and delivery of copies of transcripts of depositions. Paragraph two of the Settlement Agreement was included at the request of the Petitioner, and the Trial Court expressed its view that the respective charges made by the Respondents for preparation and delivery of copies of transcripts of depositions is a fair and reasonable one, competitive in the prevailing market and in accord with the pricing policies in effect in the area.

It is a well accepted principle of law in our judicial system that Courts favor settlement of litigation and compromise of disputed claims. *Magruder* v. *National Metropolitan Bank of Washington*, 40 A. 2d 828 (1945); *Rosenthal* v. *J. Leo Kolb, Inc.*, 97 A. 2d 925 (1953).

The general rule is that a compromise and settlement operates as a merger of and bars the right to recovery of any claim included therein. The compromise agreement is substituted for the pre-existing claims of rights, and the liabilities of the parties are measured and limited by the terms of the compromise agreement. *McGee* v. *Marbury*, 83 A. 2d 157 (1951).

A settlement voluntarily entered into cannot be repudiated by either party or set aside by the Courts, nor will a settlement be opened merely to inquire into the equities between the parties or because one of the parties has become dissatisfied. A valid compromise and settlement is final, conclusive and binding upon the parties and should not afterwards be inquired into and examined. 15 Am Jur 2d, Compromise and Settlements, Section 21.

In no sense then can this case be viewed as presenting a question of a magnitude to warrant the exercise of this Court's jurisdiction to review on writ of certiorari.

CONCLUSION

Upon the foregoing, it is respectfully submitted that the petition for writ of certiorari should be dismissed or, in the alternative, denied.

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Rockville, Maryland 20850

Of Counsel:

MORTON N. GOLDSTEIN
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Rockville, Maryland 20850

APPENDIX

APPENDIX

APPENDIX

1. Settlement Agreement.
2. Notice of Appeal dated December 5, 1975, filed by Petitioner.
3. Judgment of the District of Columbia Court of Appeals, affirming Order on Appeal, filed November 21, 1975.

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CIVIL DIVISION

Civil Action No. CA 4672-74

ROBERT L. FRIEDLI, AUGUST WOLFF, JOSEPH J. PASTORE,
T/A FRIEDLI, WOLFF & PASTORE,
Plaintiffs,

vs.

WILLIAM A. BURLESON,
Defendant.

SETTLEMENT AGREEMENT

This case is settled during trial in open court upon the following terms and conditions, which are interdependent upon each other:

(1) The motion of the defendant to amend the counterclaim, although previously denied, is now granted in order that the assertions contained therein may be finally dealt with by this stipulation of settlement.

(2) As a condition to the settlement required by the defendant, the trial Court expresses as its view that the respective charges made by the private shorthand reporters herein for preparation and delivery of copies of transcripts of depositions is a fair and reasonable one, competitive in the prevailing market and in accord with the pricing policies in effect in the area.

(3) The monies paid into the Registry of the Court are, with the consent of all counsel and the Court, hereby authorized and directed to be paid to counsel for the plaintiff in full settlement of their claims expressed herein. The defendant is therefore released of all claims expressed herein and all claims which might inure against

him arising in favor of plaintiffs prior to the date upon which this litigation was filed.

(4) All claims set forth by the defendant against plaintiffs herein, and all other claims which might have arisen or which did arise in favor of defendant against these plaintiffs prior to the date the last defensive pleading herein was filed, are hereby forever dismissed and discharged with prejudice.

(5) This document constitutes a full and complete accord and satisfaction of all liquidated or unliquidated, vested or inchoate claims existing between the parties.

_____

WILLIAM R. KEARNEY, Esquire

_____

Judge

_____

WILLIAM A. BURLESON, Esquire

NOTE: The Court and counsel for both sides initialed the original notes of the Court Reporter of the above.

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CIVIL DIVISION

No. CA 4672-74

ROBERT L. FRIEDLI, AUGUST WOLFF, and
JOSEPH J. PASTORE, T/A FRIEDLI, WOLFF & PASTORE,
918 - 18th Street, N.W., Washington, D. C.,
Plaintiffs

vs.

WILLIAM A. BURLESON,
1000 Pennsylvania Ave., S.E., Washington, D. C.,
Defendant

NOTICE OF APPEAL

Notice is hereby given that WILLIAM A. BURLESON appeals to the District of Columbia Court of Appeals from the judgment, order, decision, findings of fact and conclusion of law that the plaintiffs' respective charges which brought about the payment of money into the Court, and made by the private shorthand reporters, plaintiffs herein, are fair and reasonable amounts and entered into the court record November 7, 1974.

Names and address of parties
or attorneys to be served:

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KEARNEY AND GOLDSTEIN
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Rockville, Maryland 20850

/s/ William A. Burleson
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Pro se

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BLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

JANUARY TERM, 1975

No. 9103

CA 4672-74

WILLIAM A. BURLESON,
Appellant,

v.

ROBERT L. FRIEDLE, *et al.*,
Appellees.

BEFORE: Kelly and Yeagley, Associate Judges

JUDGMENT

This cause came on for consideration on appellees' motion for summary affirmance, the responsive pleadings filed with respect thereto, and the court having reviewed the record on appeal and appellant's brief filed herein, it is

ORDERED and ADJUDGED that the order on appeal herein is hereby affirmed.

PER CURIAM

FOR THE COURT:

/s/ Alexander L. Stevas
ALEXANDER L. STEVAS
Clerk

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Copies to:

HONORABLE EDWARD A. BEARD
Judge, Superior Court of the District of Columbia.
Clerk, Superior Court of the District of Columbia.

WILLIAM A. BURLESON, ESQUIRE
1000 Pennsylvania Avenue, S.E. 20003

MESSRS. KEARNEY and GOLDSTEIN
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